

ARTICLE 8

GRIEVANCE PROCEDURE

A. General.

1. A grievance is defined as a written complaint alleging that there has been a violation, misinterpretation or misapplication of any condition of employment contained in this Agreement, or of any rule, policy or regulation of the Employer deemed to be a violation of this Agreement or a claim of discipline without just cause. Nothing shall prohibit the grievant from contending that the alleged violation arises out of an existing mutually accepted past practice. The concept of past practice shall not apply to matters which are solely operational in nature.
2. Employees shall have the right to present grievances in person or through a designated MSEA Representative at the appropriate step of the grievance procedure. No discussion shall occur on the grievance until the designated MSEA Representative has been afforded a reasonable opportunity to be present at any grievance meetings with the employee(s). Upon request, a supervisor will assist a grievant in contacting the designated Steward or Representative. Any settlement reached shall be communicated to MSEA and shall not be inconsistent with the provisions of this Agreement. At a Step One Grievance Conference the Representative shall be the Steward, or an MSEA Staff Representative if requested by the grievant or Steward. At a Step Two Grievance Conference the MSEA Representative shall be the Steward and an MSEA Staff Representative if so requested.
3. Only related subject matters shall be covered in any one grievance. A grievance shall contain the clearest possible statement of the grievance by indicating the issue involved, the relief sought, the date the incident or alleged violation took place, and the specific Section or Sections of this Agreement involved, if any. The grievance shall be presented to the designated Employer representative on a mutually agreed upon form furnished by the Employer and MSEA and signed and dated by the grievant(s).
4. All grievances shall be presented promptly and no later than fifteen (15) week days from the date the grievant knew or could reasonably have known of the facts or the occurrence of the event giving rise to the alleged grievance. Week days, for the purpose of this Article, are defined as Monday through Friday inclusive, excluding holidays.
5. When an individual grievant(s) or MSEA respectively is satisfied with the resolution of a grievance offered by the Employer, processing the grievance will end, provided that the resolution is consistent with this Agreement.
6. MSEA, through an authorized Officer or Staff Representative, may grieve an alleged violation concerning the application or interpretation of this Agreement in the manner provided herein. Such grievance shall identify, to the extent possible, employees affected. MSEA may itself grieve alleged violations of Articles conferring rights solely upon the Association.

7. Grievances which by nature cannot be settled at a preliminary step of the grievance procedure may, by mutual waiver of a lower step, be filed at an agreed upon advanced step where the action giving rise to the grievance was initiated or where the relief requested by the grievance could be granted.
8. Group grievances are defined as, and limited to, those grievances which cover more than one employee and which pertain to like circumstances and facts for the grievants involved. Group grievances shall, insofar as practical, name all employees and/or classifications and all work locations covered and may, by mutual agreement at Step One be submitted to Step Two. Group grievances shall be so designated at the first appropriate Step of the grievance procedure, although names may be added or deleted prior to a third step hearing. Group grievances involving more than one Department shall identify all Departments involved. MSEA shall, at the time of filing such a grievance, also provide a copy to the Office of the State Employer.
9. It is expressly understood and agreed that the specific provisions of this Agreement take precedence over policy, rules, regulations, conditions and practices contrary thereto, except as otherwise provided in the Civil Service Rules and Regulations.
10. There shall be no appeal beyond Step Two on initial probationary service ratings or involuntary separation of initial probationary employees which occur during or upon completion of the probationary period.
11. Counseling memoranda, annual service ratings and reprimands are not appealable beyond Step Two, but less than satisfactory interim service ratings grievances of employees having completed the initial probationary period are appealable to Step Three.
12. In the Department of Corrections only, written reprimands may be appealed to arbitration only:
 - When a written reprimand has been timely grieved, and,
 - the grievance has not been answered at Step Two prior to discipline being appealed to arbitration, and,
 - that written reprimand is used to support further progressive discipline (which discipline would be by definition appealable to arbitration), and,
 - which discipline is, in fact, appealed to arbitration,

The merits of the grievance concerning that written reprimand may be heard during arbitration.

All other written reprimands are not eligible for appeal to arbitration.
13. The parties agree that as a principle of contract interpretation, employees shall give full performance of duty while a non-dismissal and non-suspension grievance is being processed.

14. Grievances filed before the effective date of this Agreement shall be concluded in accordance with the Grievance and Appeals Procedure then in effect.

15. In order to expedite the grievance process, by mutual agreement, telephone and/or video conferencing technology may be used at any step of the grievance process.

B. Grievance Steps.

Step One. Informal discussion of complaints between employees and/or Stewards and supervisors is encouraged prior to filing of grievances. Within 10 week days of receipt of the written grievance from the employee(s) or the designated MSEA Representative, the designated Employer representative will, on his/her own initiative or in response to a request from MSEA or the employee, schedule a meeting with the employee(s) and/or the designated MSEA Representative to discuss the grievance, and return a written decision to the employee(s) and the MSEA Representative. Grievance meetings at Step One shall normally be held during the regularly scheduled hours of the grievant.

Step Two. If not satisfied with the Employer's answer in Step One, to be considered further, the grievance shall be appealed to the departmental Appointing Authority or his/her designee within ten (10) week days from receipt of the answer in Step One. The Employer Representative(s) may meet with the employee(s) and the designated MSEA Representative in grievances concerning disciplinary issues, to discuss and attempt to resolve the grievance. Such meetings shall take place concerning disciplinary grievances involving suspension, discharge, demotion or less than satisfactory service rating. In grievances concerning primary contract interpretation, which excludes those grievances involving discipline and formal counseling, the Employer Representative may meet with the designated MSEA Representative to discuss and attempt to resolve the grievance. It is the parties' intent that such meetings will involve discussion and consideration of the grievance on the basis of a full disclosure of the relevant facts and documentation by both parties, however, such disclosure shall not limit the parties' rights as described in Section H of this Article. All Step Two denials of disciplinary grievances involving suspension, discharge, demotion, mandatory change of residence or less than satisfactory service rating shall be accompanied by documentation that supports the action, if not previously provided to a Union Representative. The written decision of the Employer will be placed on the grievance form by the departmental Appointing Authority or his/her designee and returned to the grievant(s) and the designated MSEA Representative within fifteen (15) week days from the date of receipt of the grievance form at Step Two or within ten (10) week days of a meeting, if such a meeting is held. If a Step Two grievance conference is held, such meeting shall be held within fifteen (15) week days of receipt of the grievance at Step Two.

Step Three. If not satisfied with the Employer answer in Step Two, only MSEA may appeal the grievance to arbitration within forty-five (45) week days from the date of the Department's answer in Step Two. All appeals to arbitration of disciplinary grievances involving suspension, discharge, demotion, or less than satisfactory

service rating shall be accompanied by documentation in accordance with Section H of this Article. If an unresolved grievance is not timely appealed to arbitration, it shall be considered terminated on the basis of the Employer's Step Two answer without prejudice or precedent in the resolution of future grievances. The parties may propose consolidation of grievances containing similar issues.

At the request of MSEA following a second step denial, a Staff Representative of MSEA and of the Department where the grievance originates will discuss the matter. An effort shall be made in such discussions to arrive at fair and equitable grievance settlements to avoid the necessity of arbitration. Such settlements, if reached, shall be confirmed in writing when agreed to by the Employer and MSEA.

The appeal to arbitration will consist of a written notice to the Office of the State Employer and the affected Department. Within ten (10) week days of the receipt of the Union's notice, the Office of the State Employer shall request arbitration in accordance with the procedures specified herein.

Within thirty (30) week days after approval of this Agreement, MSEA and the Office of the State Employer shall simultaneously exchange the names of ten (10) labor arbitrators (who are members of the National Academy of Arbitrators, or on the American Arbitration Association, the Federal Mediation and Conciliation Service or Michigan Employee Relations Commission Rolls). Each party shall then have the right to strike five names from the other party's list. The remaining names shall be the pool of arbitrators to be used for all grievances. Any arbitrator nominated by both parties shall serve on the panel. Should a selected arbitrator decline to serve on or removes themselves from the panel, the party proposing the name may submit another name of an arbitrator to be considered by the other party.

Once the panel is established the names will be listed in alphabetical order. Assignments shall be in a rotational order.

During January of each year the Union has the right to remove one Arbitrator from the panel and the Office of the State Employer has the right to remove one Arbitrator from the panel. The Union and the Office of the State Employer will mutually agree upon the replacement Arbitrator(s).

The Office of the State Employer shall provide copies of the request for arbitration to the affected Department and the Union. Each request for arbitration shall require that the Arbitrator schedule and hold the hearing within one hundred twenty (120) calendar days of receipt of the request for arbitration. The parties shall set aside normal business in order to schedule and hold the hearing within this time frame. By mutual written agreement, the parties may waive the one hundred twenty (120) calendar day time limit. Upon receipt of notice from the Arbitrator that the one hundred twenty (120) calendar day time limit cannot be met, the Office of the State Employer shall notify MSEA and send a second request for arbitration to the next Arbitrator on the list.

Before the arbitration hearing, the Office of the State Employer may schedule a meeting with MSEA and the Department to review the grievance. An effort shall be

made in such discussions to arrive at a fair and equitable grievance settlement. Any settlement shall be confirmed in writing when agreed to by the Union and the Office of the State Employer.

The hearing shall be conducted under the rules of the American Arbitration Association except as otherwise provided for in this Agreement.

Closing arguments may be made orally by mutual agreement. Any written briefs or closing arguments submitted by the parties shall be postmarked or submitted electronically to the arbitrator no later than 30 calendar days from the conclusion of the arbitration hearing.

The parties, which for MSEA is the President or President's designee, may modify any period of time by mutual agreement.

The expenses and fees of the arbitrator shall be borne by the losing party. The arbitrator shall have the authority to prorate the cost where a decision does not clearly state which party is the losing party. The cost of the hearing room, if any, shall be shared equally by the parties to the arbitration. The expenses of a court reporter shall be borne by the party requesting the reporter unless the parties agree to share such costs. Any cancellation or rescheduling fees shall be the responsibility of the requesting party. In the event that both parties mutually request a cancellation or rescheduling, any associated costs shall be borne equally.

The Arbitrator shall only have the authority to adjust grievances in accordance with this Agreement as permitted in the Civil Service Rules and Regulations. The Arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of the Civil Service Rules and Regulations or this Agreement and shall not make any award which in effect would grant MSEA or the Employer any rights or privileges which were not obtained in the negotiation process. The authority of the Arbitrator shall remain subject to and subordinate to the limitations and restrictions on subject matter and personal jurisdiction in the Civil Service Rules and Regulations.

The decision of the Arbitrator will be final and binding on all parties to this Agreement, except as otherwise provided in the Civil Service Rules and Regulations. Arbitration decisions shall not be appealed to the Civil Service Commission, except that any person may file with the State Personnel Director a complaint that the Arbitrator's decision has been applied or interpreted to violate or otherwise rescind, limit, or modify a Civil Service Rule or Regulation governing a prohibited subject of bargaining. When the Arbitrator declares a bench decision, such decision shall be rendered in writing within fifteen (15) calendar days from the date of the arbitration hearing. The written decision of the Arbitrator shall be rendered within thirty (30) calendar days from the closing of the record of the hearing. The written decision of the arbitrator shall be communicated to the advocates and the Office of the State Employer in electronic format.

Expedited Arbitration.

- a. An expedited arbitration system shall be used for all appeals to arbitration that involve the involuntary separation of an employee from state employment.
- b. The Arbitrator selected shall be requested to hear the case within sixty (60) calendar days of being assigned the case. By mutual written agreement, the parties may waive the sixty (60) calendar day time limit. Upon receipt of notice from the Arbitrator that the sixty (60) calendar day time limit cannot be met, the Office of the State Employer shall send a second request for arbitration to the next Arbitrator on the list.
- c. Briefs, if any, shall be filed simultaneously by the parties within fourteen (14) calendar days of the last day of the arbitration hearing.
- d. The decision of the Arbitrator shall be rendered within fourteen (14) calendar days of the closing of the record. By mutual agreement, the Arbitrator may issue a bench decision.
- e. Transcript cost, if any, shall be paid by the party requesting the transcript unless the parties agree to share the cost and have a copy prepared for each party by the reporter.

C. Time Limits.

Grievances may be withdrawn once without prejudice at any step of the grievance procedure. A grievance which has not been settled and has been withdrawn may be reinstated based on new evidence not previously available within thirty (30) week days from the date of withdrawal.

Grievances not appealed within the designated time limits in Steps One or Two of the grievance procedure will automatically result in the grievance being considered closed. Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure shall be considered automatically appealable and processed to the next step. Where the Employer does not provide the required answer to a grievance within the time limit provided at Steps One or Two, the time limits for filing at the next step shall be extended for ten (10) additional week days. The time limits at any step or for any hearing may be extended by written mutual agreement of the parties involved at that particular step.

If the Employer Representative with whom a grievance appeal must be filed is located in a city other than that in which the grievance was processed in the preceding step, the mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Similarly, when an Employer answer must be forwarded to a city other than that in which the Employer Representative works, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period.

D. Retroactivity.

Settlement of grievances may or may not be retroactive as the equities of the particular case may demand as determined by the Arbitrator. In any case where it is

determined that the award should be applied retroactively, except for administrative errors relating to the payment of wages, the maximum period of retroactivity allowed shall be a date not earlier than one hundred and eighty (180) calendar days prior to the initiation of the written grievance in Step One.

Employees who voluntarily terminate their employment will have their grievances immediately withdrawn unless such grievance directly affects their status upon termination or a claim of vested money interest, in which cases the employee may benefit by any later settlement of a grievance in which they were involved.

It is the intent of this provision that employees be made whole in accordance with favorable arbitral findings on the merits of particular disputes, however, all claims for back wages shall be limited to the amount of straight time wages that the employee would otherwise have earned less any unemployment compensation, workers compensation, long term disability compensation, social security, welfare or compensation from any employment or other source received during the period for which back pay is provided; however, earnings from approved supplemental employment shall not be so deducted.

E. Exclusive Procedure.

The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes permitted under Civil Service Rules and Regulations. The grievance procedure set out above shall not be used for the adjustment of any dispute for which the Civil Service Rules or Regulations require the exclusive use of a Civil Service forum or procedure.

F. Processing Grievances.

Whenever possible, the grievant or group grievance representative and the designated MSEA Representative shall utilize non-work time to consult and prepare.

When such preparation is not possible, the grievant or group grievance representative(s) and the designated Representative will be permitted a reasonable amount of time, not to exceed one (1) hour without loss of pay, for consultation and preparation prior to any scheduled grievance step meeting during their regularly scheduled hours of employment. Overtime is not authorized.

One (1) designated Steward and the grievant will be permitted to process a grievance without loss of pay. In a group grievance a Steward or MSEA Representative, and up to two (2) grievants shall be entitled to appear without loss of pay to represent the group. The Steward or MSEA Representative must be employed at one of the work sites represented in the grievance. In group grievances involving more than one Bargaining Unit and/or more than one Department, the group shall be represented by two (2) employee grievants and MSEA Staff and/or attorney.

The Employer is not responsible for compensating any employees for time spent processing grievances outside their regularly scheduled hours of employment. The

Employer is not responsible for any travel or subsistence expenses incurred by grievants or Stewards in processing grievances.

G. Discipline.

The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause. A non-probationary employee who alleges that such action was not based on just cause may appeal a demotion, suspension, or discharge taken by the Employer beginning with Step Two of the Grievance Procedure. Probationary employee appeals are limited in accordance with Section A10 above.

H. Documents and Witnesses Required for Arbitration.

Upon written request, MSEA shall receive specific documents or records available from the Employer, in accordance with or not prohibited by law, and pertinent to the grievance under consideration. Discretion permitted under the Freedom of Information Act shall not be impaired by this Section. All documents not previously provided or exchanged which either party intends to use as evidence will be forwarded to the other party on an ongoing basis; however, such response shall not limit either party in the presentation of necessary evidence, nor shall either party be limited from introducing any document or evidence it deems necessary to rebut the case of the other.

At least ten (10) calendar days before a scheduled arbitration hearing, MSEA and the Employer shall simultaneously exchange a written list of the witnesses they plan to call including those witnesses MSEA requests be relieved from duty. Nothing shall preclude the calling of previously unidentified witnesses.

Employees required to testify will be made available without loss of pay; however, whenever possible, they shall be placed on call to minimize time lost from work. Employees who have completed their testimony shall return promptly to work when their testimony is concluded unless they are required to assist the principal MSEA Representative(s) in the conduct of the case. The intent of the parties is to minimize time lost from work.

I. Grievance Conduct.

Employees, Stewards, MSEA Representatives, supervisors and managers shall, throughout the grievance procedure, treat each other with courtesy, and no effort shall be made by either party or its representatives to harass or intimidate the other party or its representatives.

J. Civil Service Rule Limitation on the Grievance Procedure.

The following is not a part of this collective bargaining Agreement but is reproduced here for reference purposes only and may be amended, modified or abolished at any time by the Civil Service Commission.

None of the following disputes can be adjudicated in a grievance procedure authorized in a Collective Bargaining Agreement, but can only be adjudicated in a Civil Service forum under the exclusive procedures provided for in the Civil Service Rules and Regulations:

1. A grievance by an employee who is aggrieved by the abolition or creation of a position.
2. A grievance by an employee disciplined or denied the use of sick and annual leave for striking.
3. A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, against the Civil Service Commission, or an employee of the Civil Service Commission.
4. A complaint including, but not limited to, a grievance, technical appeal, or labor relations appeal, arising out of or related to a prohibited subject of bargaining.
5. Any matter or dispute in which Civil Service Rules or Regulations provide an exclusive procedure or forum for the resolution of the matter or dispute.